

## Commodity Credit Corporation, USDA

## § 1436.2

(c) The value of CCC-owned inventory is dependent upon the storage location of the sugar and the type of sugar (raw or refined). CCC will announce the value of its inventory before bid solicitation. Accordingly, the quantity of sugar CCC will provide in terms of an in-kind payment to a processor will be determined by dividing:

(1) The total of the processor's bid amount that CCC accepts, by

(2) The value of CCC's inventory at the storage location at which title will transfer from CCC to the processor.

### § 1435.404 Timing of distribution of CCC-owned sugar.

Distribution of sugar from CCC inventory will occur in such manner as CCC determines appropriate.

### § 1435.405 Miscellaneous provisions.

(a) CCC may permit processors to bid, in lieu of acreage, desugarizing capacity or other measures of sugar production as CCC determines.

(b) The contract shall provide for the payment of liquidated damages if a processor fails to comply with the obligations specified in the CCC production diversion contract.

(c) CCC will transfer title of the sugar to the processor by notifying the processor or assignee that the sugar is available. CCC will stop storage payments on this sugar on the date of transfer.

## PART 1436—FARM STORAGE FACILITY LOAN PROGRAM REGULATIONS

Sec.

1436.1 Applicability.

1436.2 Administration.

1436.3 Definitions.

1436.4 Availability of loans.

1436.5 Eligible borrowers.

1436.6 Eligible storage or handling equipment.

1436.7 Loan term.

1436.8 Security for loan.

1436.9 Loan amount and loan application approvals.

1436.10 Down payment.

1436.11 Disbursements and assignments.

1436.12 Interest and fees.

1436.13 Loan installments, delinquency, and acceleration of maturity date.

1436.14 Taxes.

1436.15 Maintenance, liability, insurance, and inspections.

1436.16 Foreclosure, liquidation, assumptions, sale or conveyance, bankruptcy.

1436.17 Environmental compliance.

1436.18 Appeals.

1436.19 Equal Opportunity and Non-discrimination requirements.

AUTHORITY: 7 U.S.C. 7971; 15 U.S.C. 714 *et seq.*

SOURCE: 66 FR 4612, Jan. 18, 2001, unless otherwise noted.

### § 1436.1 Applicability.

The regulations of this part provide the terms and conditions under which CCC may provide low-cost financing for producers to build or upgrade on-farm storage and handling facilities. Because liens and security interests related to this activity may be governed by state law, CCC may adapt certain procedures relating to those issues that may vary between States.

### § 1436.2 Administration.

(a) The Farm Storage Facility Loan Program shall be administered under the general supervision of the Executive Vice President, CCC or designee and shall be carried out in the field by FSA State committees, FSA county committees and FSA employees.

(b) FSA State committees, FSA county committees and FSA employees, do not have the authority to modify or waive any of the provisions of the regulations of this part.

(c) The FSA State committee shall take any action required by these regulations that has not been taken by the county committee. The FSA State committee shall also:

(1) Correct, or require the FSA county committee to correct, any action taken by such FSA county committee that is not in accordance with the regulations of this part; and

(2) Require the FSA county committee to withhold taking any action that is not in accordance with the regulations of this part.

(d) No provision or delegation herein to a State or FSA county committee shall preclude the Executive Vice President, CCC, or a designee, or the Administrator, FSA, or a designee, from determining any question arising under the program or from reversing or

modifying any determination made by the State or FSA county committee.

(e) The Deputy Administrator, Farm Programs, FSA, may authorize State and FSA county committees to waive or modify deadlines and other program requirements in cases where lateness or failure to meet such other requirements does not adversely affect the operation of the Farm Storage Facility Loan Program.

(f) A representative of CCC may execute Farm Storage Facility Loan Program applications and related documents only under the terms and conditions determined and announced by CCC. Any such document that is not executed in accordance with such terms and conditions, including any purported execution prior to the date authorized by CCC, shall be void.

(g) The Deputy Administrator may suspend this program at any time when it appears that there is no shortage of storage that needs to be addressed or where some other reason shall arise for which it appears that the program goals can be achieved more efficiently in a manner different from that provided for in this rule.

**§ 1436.3 Definitions.**

The following definitions shall be applicable to the program authorized by this part and will be used in all aspects of administering this program:

*Aggregate outstanding balance* means the sum of the outstanding balances of all loans disbursed under this part to each borrower signing the note and security agreement.

*Assumption* means the act or agreement by which one borrower takes over or assumes the debt of another borrower.

*Collateral* means the storage structure, drying equipment or handling equipment securing the loan.

*Crop of economic significance* means any insurable facility loan commodity that contributes 10 percent or more of the total expected value of all crops grown by the loan applicant except if the expected liability under the catastrophic level of crop insurance for a crop is equal to or less than the administrative fee for the crop, that crop shall not be economically significant.

*Facility loan commodity* means wheat, rice, raw or refined sugar, soybeans, sunflower seed, canola, rapeseed, safflower, flaxseed, mustard seed, other oilseeds as determined and announced by CCC, dry peas, lentils, small chickpeas, harvested as whole grain and including peanuts, except that corn, grain sorghum, oats, wheat, or barley shall be included whether harvested as whole grain or other than whole grain.

*Financing statement* means the appropriate document that gives legal notice of a security interest in personal property when properly filed or recorded.

*Non-movable or non-salable collateral* means either collateral the county committee determines cannot be sold and moved to a new location because of the type of construction involved or because the collateral has deteriorated to the point that it has no sale recovery value.

*Person* means any individual, group of individuals, partnership, corporation, estate, trust, association, cooperative, tribal venture, or other business enterprise, or other legal entity who is, or whose members are, a citizen or citizens of the United States, or a legal resident alien.

*Satisfactory credit history* means a history of repaying debts as they came due unless the failure to repay or tardiness in payment was due to circumstance beyond the applicant's control as determined by CCC upon proof submitted by the applicant.

*Severance agreement* means an agreement under which a party may consent to the security interest of another in property thereby allowing the severance of a fixture from the real estate.

*Storage need requirement* means:

(1) The average of the most recent 3 years available, the applicant's share of the acres farmed for each facility loan commodity requiring storage at the proposed facility multiplied by a yield determined reasonable by the county committee, multiplied by two, less existing storage capacity. If acreage data is not available, including prevented planted acres, or the data is not applicable to the storage need, a reasonable acreage projection may be made for newly acquired farms, changes in cropping operations, or for

facility loan commodity crops being grown for the first time.

(2) For sugar-related loans, a projection from the processor of the processing volume, available storage capacity, volume not to be marketed due to marketing allotments, and other factors affecting the processor's storage need, as appropriate. CCC shall determine if the storage need is reasonable using data such as past processing volume and marketing allotments.

*Subordination agreement* means any agreement under which a party may subordinate a security interest in property to the interest of another party.

*Uniform Commercial Code* means the laws generally known by that name covering commercial transactions such as sales, negotiable instruments, and secured transactions.

[66 FR 4612, Jan. 18, 2001, as amended at 67 FR 54938, Aug. 26, 2002]

#### § 1436.4 Availability of loans.

(a) An application for a loan shall be submitted to the administrative county office that maintains the records of the farm or farms to which the application applies. With State office approval, loans may be made or serviced by a county office other than the administrative county office. Upon request, the applicant shall furnish information and documents as the State or county committee deems reasonably necessary to support the application. This may include financial statements, receipted bills, invoices, purchase orders, specifications, drawings, plats, or written authorization of access.

(b) Borrowers who authorize delivery, site preparation, or construction actions without an approved loan, do so at their own risk and without creating any liability on behalf of CCC.

(c) For sugar-related loans, a loan application shall be submitted to the county FSA office that maintains the applicant's records. If no such records exist, loan applications shall be submitted to the county office serving the headquarters' location of the sugar processor.

[66 FR 4612, Jan. 18, 2001, as amended at 67 FR 54938, Aug. 26, 2002]

#### § 1436.5 Eligible borrowers.

(a) *Borrower* means a person who, as landowner, landlord, operator, producer, tenant, leaseholder, sharecropper, or processor of domestically produced sugarcane or sugar beets:

(1) Has a satisfactory credit history according to the definition in §1436.3 and as recommended to the approving committee by a FSA employee with FSA loan approval authority;

(2) Demonstrates an ability to repay the debt arising under this program using a financial statement acceptable to CCC prepared within 90 days of the date of application, as recommended to the approving committee by a FSA employee with FSA loan approval authority;

(3) Has no disqualifying delinquent Federal debt under the Debt Collection Improvement Act of 1996;

(4) Is a producer of a facility loan commodity by CCC;

(5) Demonstrates a need for increased storage capacity as determined by CCC if the applicant is applying for a loan for a storage structure;

(6) Provides proof of crop insurance offered under the Federal Crop Insurance Program for insurable crops of economic significance on all farms operated by the borrower in the county where the storage facility is located;

(7) Is in compliance with USDA provisions for highly erodible land and wetlands conservation provisions according to 7 CFR part 12;

(8) Demonstrates compliance with any applicable local zoning, land use, and building codes for the applicable farm storage facility structures;

(9) Annually provides proof of flood insurance if CCC determines such insurance is necessary to protect the interests of CCC, and annually provides proof that the structures for which the loan is made has all peril structural insurance;

(10) Demonstrates compliance with the National Environmental Policy Act regulations at 40 CFR parts 1500-1508; and

(11) Has not been convicted under Federal or State law of a disqualifying controlled substance violation under 7 CFR part 718.

(b) For sugar related facility loans:

## § 1436.6

## 7 CFR Ch. XIV (1–1–09 Edition)

(1) Paragraphs (a)(4), (6), and (7) of this section do not apply.

(2) Sugar processors must be approved by CCC to store sugar owned by CCC or pledged as security to CCC for non-recourse loans.

[66 FR 4612, Jan. 18, 2001; 66 FR 17073, Mar. 29, 2001, as amended at 67 FR 54938, Aug. 26, 2002]

### § 1436.6 Eligible storage or handling equipment.

(a) Loans may be made only for the purchase and installation of eligible storage facilities and permanently affixed drying and handling equipment, for the remodeling of existing storage facilities, or for permanently affixed drying and handling equipment as provided in this section. Eligible storage and handling facilities shall include the following:

(1) New conventional-type cribs or bins designed and engineered for whole grain storage and having a useful life of at least 10 years;

(2) New oxygen-limiting storage structures or remanufactured oxygen-limiting storage structures built to the original manufacturer's design specifications using original manufacturer's rebuild kits, and other upright silo-type structures designed for whole grain storage or other than whole grain storage and having a useful life of at least 10 years; and

(3) New flat-type storage structures including a permanent concrete floor, designed for and primarily used to store facility loan commodities for the term of the loan and having a useful life of at least 10 years; and

(4) New structures that are bunker-type, horizontal, or open silo structures designed for whole grain storage or other than whole grain storage and having a useful life of at least 10 years.

(b) The calculation of the loan amount may include costs associated with building, improving, or renovating an eligible storage or handling facility, including:

(1) Permanently affixed grain handling equipment and grain drying equipment, including perforated floors determined by the approving committee to be needed and essential to the proper functioning of the grain storage system;

(2) Safety equipment as required by CCC and meeting OSHA requirements such as lighting, and inside and outside ladders;

(3) Equipment to improve, maintain, or monitor the quality of stored grain, such as cleaners, moisture testers, and heat detectors;

(4) Electrical equipment, including labor and materials for installation, such as lighting, motors, and wiring integral to the proper operation of the grain storage and handling equipment; and

(5) Concrete foundations, aprons, pits, and pads (including site preparation, labor and materials) essential to the proper operation of the grain storage and handling equipment.

(c) Storage and handling equipment with respect to which no loans for installation or related costs shall be disbursed under this part include:

(1) Portable grain drying equipment, portable handling equipment and portable augers;

(2) Structures of a temporary nature that require the weight or bulk of the stored commodity to maintain its shape (such as fences or bags);

(3) Used structures or handling equipment;

(4) Structures that are not suitable for storing the facility loan commodities for which a need is determined;

(5) Storage structures to be used for commercial purposes. Commercial purpose is defined as the storage and handling of grain, whether paid or unpaid, for persons other than the loan applicant, except for family members as defined in 7 CFR Part 718, and tenants or landlords sharing in the crop requiring storage. Any facility that is in working proximity to any commercial storage operation shall be considered to be part of a commercial storage operation; and

(6) Portable or permanent weigh scales.

(d) Loans may be approved for financing additions to or modifications of an existing storage facility with an expected useful life of at least 10 years if the county committee determines there is a need for the capacity of the structure, but not for the sole replacement of worn out items such as motors, fans, or wiring.

(e) Loans may be approved for new storage and handling components of a pre-owned structure provided the completed facility has a useful life of at least 10 years. The pre-owned structure must be purchased and moved to a new storage location. Eligible items for such a loan include costs such as new bin rings or roof panels needed to make a purchased pre-owned structure useable, new aeration systems, site preparation, construction off-farm paid labor cost, foundation material and off-farm paid labor. Ineligible items for such a loan include the cost of purchasing and moving the used structure.

(f)(1) Paragraphs (a) and (b) of this section shall not apply to sugar-related loans made under this part.

(2) For sugar-related loans, the loan amount may include costs associated with the purchase, installation, building, improving, remodeling or renovating an eligible storage or handling facility. Eligible facilities include the following:

(i) New conventional-type bins or silos designed for and used to store raw or refined sugar, having a useful life of at least 15 years;

(ii) New flat-type storage structures including a permanent concrete floor, designed for and used to store raw or refined sugar, having a useful life of at least 15 years;

(iii) New storage structures designed for and used to store in-process sugar, having a useful life of at least 15 years.

(iv) Permanently affixed sugar handling equipment determined by the CCC to be needed and essential to the proper functioning of the sugar storage system;

(v) Safety equipment CCC requires such as lighting, and inside and outside ladders;

(vi) Equipment to improve, maintain, or monitor the quality of stored sugar, such as moisture testers, and heat detectors;

(vii) Electrical equipment, including labor and materials for installation, such as lighting, motors, and wiring integral to the proper operation of the sugar storage and handling equipment; and

(viii) Concrete foundations, aprons, pits, and pads (including site preparation, labor and materials) essential to

the proper operation of the sugar storage and handling equipment.

(3) For sugar-related loans, storage and handling equipment that is not eligible for loans, includes:

(i) Portable handling equipment and portable augers;

(ii) Structures of a temporary nature that require the weight or bulk of the stored commodity to maintain its shape (such as fences or bags);

(iii) Used or pre-owned structures or handling equipment;

(iv) Structures that are not suitable for storing raw or refined sugar;

(v) Weigh scales.

(4) For sugar-related loans, loans may be approved for financing additions to or modifications of an existing storage facility with an expected useful life of at least 15 years if CCC determines there is a need for the capacity of the structure.

[66 FR 4612, Jan. 18, 2001, as amended at 67 FR 54938, Aug. 26, 2002]

#### § 1436.7 Loan term.

The maximum term of the loan shall be 7 years from the date a promissory note and security agreement are executed, except in the case of a sugar-related loan in which case CCC, at its discretion, may authorize a loan of 15 years. The minimum term of a sugar-related loan is 7 years. No extensions of the loan term will be granted. The loan balance and all related costs are due 7 years from the date of the execution of the promissory note and security agreement, except in the case of a sugar-related loan, in which case such balance and costs are due 15 years from the date of the promissory note and security agreement are executed.

[67 FR 54939, Aug. 26, 2002]

#### § 1436.8 Security for loan.

(a) Except as agreed to by CCC, all loans shall be secured by a promissory note and security agreement covering the farm storage facility. The promissory note and security agreement shall grant CCC a security interest in the collateral and shall be perfected in the manner specified in the laws of the state where the collateral is located. CCC's security interest in the collateral shall constitute the sole security

interest in such collateral except for prior liens on the underlying realty that by operation of law attach to the collateral if it is or will become a fixture. If any such prior lien on the realty will attach to the collateral, a severance agreement must be obtained in writing from each holder of such a lien, including all government or USDA agencies. No additional liens or encumbrances may be placed on the storage facility after the loan is approved unless CCC approves otherwise in writing.

(b) For loan amounts exceeding \$50,000, or where the aggregate outstanding loan balance will exceed \$50,000 or for loans where the approving committee determines as a result of financial analysis that additional security is required, a lien on the real estate parcel on which the farm storage facility is located will be required in the form of a real estate mortgage, deed of trust, or other security instrument approved by the United States Department of Agriculture's Office of General Counsel. CCC's interest in the real estate shall be superior to all other liens and is the first lien that secures the amount of the loan. A loan will be considered to be adequately secured when the real estate security for the loan is at least equal to the loan amount. If the real estate is covered by a prior lien, a lien waiver may be obtained by means of a subordination agreement approved for use in the State by USDA's Office of General Counsel. CCC will not require such an agreement from any agency of the Department of Agriculture. Loans may be secured by a junior lien on real estate when the loan is adequately secured and a severance agreement is obtained from prior lien holders.

(c) Title insurance or a title opinion is required for loans secured by real estate.

(d) Real estate liens may cover land separate from the collateral if a lien on the underlying real estate is not feasible and if:

(1) The borrower owns the separate acreage; and

(2) the acreage has sufficient value based on the fair market value of the acreage at the time of the application as determined by the county com-

mittee, to insure repayment of the loan.

(e) Notwithstanding the preceding subsections of this section, a borrower, in lieu of such liens as are otherwise required by those subsections, may provide a letter of credit, bond, or other form of security, as approved by CCC.

(f) If an existing structure is remodeled and an addition becomes an attached, integral part of the existing storage structure, CCC's security interest shall include the existing storage structure.

(g) The cost of loan closings by attorneys, title opinions, title insurance, title searches, filing and recording all real estate liens, fixture filings and later subordinations will be paid by the borrower. CCC shall pay such costs relating to credit reports, collateral lien searches, and filing and recording financing statements for the collateral.

(h) For sugar-related facility loans, in addition to the above requirements, additional security, including real estate, chattels, crops in storage, and other assets owned by the applicant, is required if necessary to adequately secure the loan. A sugar-related loan will be considered to be adequately secured when the CCC determined value of security for the loan is at least equal to 125 percent of the loan amount.

(i) For sugar-related facility loans, paragraph (g) is not applicable. The borrower shall pay all loan making fees and closing costs. This includes, but is not limited to, attorney fees for loan closings, environmental assessments and studies, chattel and real estate appraisals, title opinions, title insurance, title searches, filing and recording all real estate liens, fixture filings, subordinations, credit reports, collateral lien searches, and filing and recording financing statements for the collateral.

[66 FR 4612, Jan. 18, 2001, as amended at 67 FR 54939, Aug. 26, 2002]

**§ 1436.9 Loan amount and loan application approvals.**

(a) The cost on which the loan shall be based is the net cost of the eligible facility, accessories, and services to the applicant after discounts and rebates, not to exceed a maximum per-

## Commodity Credit Corporation, USDA

## § 1436.11

bushel cost established by the FSA State committee.

(b) The net cost for storage facilities and handling equipment may include the following: all real estate lien related fees paid by the borrower, including attorney fees, except for filing fees, environmental and historic review fees including archaeological study fees, the facility purchase price, sales tax, shipping, delivery charges, site preparation costs, installation cost, material and labor for concrete pads and foundations, material and labor for electrical wiring, electrical motors, off-farm paid labor, on farm site preparation and construction equipment costs not to exceed commercial rates approved by the county committee, and new on-farm material approved by the county committee. The net cost shall not include secondhand material or any other item that is determined by the approving authority to be ineligible for loan.

(c) The maximum principal amount of any farm storage facility loan shall be 85 percent of the net cost of the applicant's needed storage or handling equipment not to exceed \$100,000 for each borrower signing the note and security agreement. Unless otherwise approved by CCC, borrowers shall be considered to be separate persons or borrowers for purposes of applying the preceding sentence only to the extent that they would normally be considered a separate person under the rules set out in 7 CFR part 1400.

(d) The aggregate outstanding balance of all facility loans for any one borrower signing the note and security agreement may not exceed \$100,000.

(e) When a storage structure has a larger capacity than the applicant's needed capacity, as determined by CCC, the net cost eligible for a loan shall be prorated. Only costs associated with the applicant's needed storage capacity will be considered eligible for loan under this part.

(f) When a flat storage structure has space that is not used primarily for facility loan commodity storage, such as office space, the loan amount shall be adjusted for the ineligible space as determined by CCC.

(g) The FSA county committee may approve applications, if loan funds are

available, up to the maximum approval amount unless the FSA State committee establishes a lower limit for county committee approval authority.

(h) Farm storage facility loan approvals will expire in 4 months after the date of approval unless extended in writing for an additional 4 months by the FSA State Committee. Sugar storage facility loan approvals will expire in 8 months after the date of approval unless extended in writing for an additional 4 months by the FSA State Committee.

(i) CCC may at any time refuse to make new loans.

(j) For sugar-related facility loans, paragraphs (c) and (d) and (g) do not apply.

(k) For sugar-related facility loans, the Agency approval officials may only approve loans, subject to available funds.

[66 FR 4612, Jan. 18, 2001, as amended at 67 FR 54939, Aug. 26, 2002]

### § 1436.10 Down payment.

(a) A minimum down payment representing the difference between the net cost of the storage facility and the amount of the loan determined in accordance with § 1436.9 shall be made by the loan applicant to the supplier or contractor before the loan is disbursed.

(b) The down payment shall be in cash unless some other form of payment is approved by CCC. The down payment may be obtained by the borrower from another lending source.

(c) The down payment may not include any trade-in, discount, rebate, credit, deferred payment, post-dated check, or promissory note to the supplier or contractor.

### § 1436.11 Disbursement and assignments.

(a) Disbursement of the loan by CCC will be made after the farm storage facility has been delivered, erected, constructed, assembled, or installed and a CCC representative has inspected and approved such facility.

(b) Disbursement will be made only if the borrower furnishes satisfactory evidence of the total cost of the facility and payment of all debts on the facility in excess of the amount of the loan.

## § 1436.12

## 7 CFR Ch. XIV (1–1–09 Edition)

(c) Disbursement may be made jointly to the borrower and the contractor or supplier, except disbursement may be made to the borrower only if CCC determines the borrower has paid the contractor or supplier all amounts that are due and owing with respect to the facility and that all applicable liens, security interests, or other encumbrances have been released.

(d) A release of liability will be required from contractors and suppliers providing goods and services to the loan applicant.

(e) Loan proceeds cannot be assigned.

### § 1436.12 Interest and fees.

(a) Loans shall bear interest at the rate equivalent, as determined by CCC, to the rate of interest charged on Treasury securities of comparable maturity on the date the loan is approved.

(b) The interest rate for each loan will remain in effect for the term of the loan.

(c) The loan applicant shall pay a non-refundable application fee in such amount determined appropriate by CCC, which fee may not in any case be less than \$45.

(d) For sugar-related facility loans, paragraph (c) does not apply.

[66 FR 4612, Jan. 18, 2001, as amended at 67 FR 54939, Aug. 26, 2002]

### § 1436.13 Loan installments, delinquency, and acceleration of maturity date.

(a) Equal installments of principal plus interest will be amortized over the loan term for purposes of setting a payment schedule. Installments are due and payable not later than the last day of each 12-month period of the loan, until the principal plus interest has been paid in full.

(b) Each installment may be paid in cash, money order, wire transfer, or by personal, certified, or cashier's check. Repayment shall be applied first to accrued interest and then to principal.

(c) The following actions will be taken when installments are not paid on the due date: A demand for payment shall be mailed to the debtor after the due date has passed. If the installment is not paid within 30 days of the due date or if a new due date acceptable to CCC has not been established based on

a financial plan submitted by the debtor, the initial demand may be followed by two subsequent written demands at approximately 30-day intervals unless other action is needed to protect the interests of CCC. If the debtor files an appeal according to §1436.18 of this part, collection action shall cease until the appeal process is complete, however, any payments due the debtor may be withheld and, depending on the outcome of the appeal, may later be offset and applied to reduce the indebtedness. In lieu of a foreclosure on the collateral in the case of a delinquency, CCC may permit a rescheduling of the debt or other measures consistent with the collection of other debts under the provisions of Part 1403. Alternately, CCC may implement such other collection procedures as it deems appropriate.

(d) A claim shall be established against a borrower for any amounts remaining due after liquidation of the loan.

(e) CCC may declare the entire indebtedness immediately due and payable if the borrower violates any of the terms and conditions of this part, fails to pay any installment on time, or breaches any of the terms and conditions of any of the instruments executed in connection with the loan, or if, during the life of the loan, the collateral is used in connection with or by any unauthorized commercial operation including, but not limited to, elevators, warehouses, dryers or processing plants.

(f) Any action authorized by the provisions of this section may be taken:

(1) Against a debtor's pro rata share of payments due any entity that the borrower participates in, either directly or indirectly, as determined by CCC.

(2) Against related persons or entities, irrespective of the debtors share, when CCC determines that the debtor has established an entity, or reorganized, transferred ownership of, or changed in some other manner, their operation, for the purpose of avoiding the payment of the debt.

(g) The loan may be paid in full or in part without penalty at any time before maturity.



## Commodity Credit Corporation, USDA

## § 1436.16

(h) Upon payment of a loan, CCC shall release CCC's security interest in the collateral.

### § 1436.14 Taxes.

The borrower must pay, when due, all real and personal property taxes that may affect CCC's security interest in all collateral securing the note evidencing the loan. To protect its interests, CCC may pay any unpaid taxes with respect to the collateral securing a loan made in accordance with this part, and if CCC does so, the borrower shall reimburse CCC for such payment, and if unpaid by the borrower, such debt shall become due immediately.

### § 1436.15 Maintenance, liability, insurance, and inspections.

(a) The borrower must maintain the loan collateral in a condition suitable for the storage of one or more of the facility loan commodities. For purpose of this section the term "loan collateral" shall mean any property of any kind that was built or improved, or acquired using a loan made under this part.

(b) Until the loan has been repaid, the borrower shall be liable for all damages to or destruction of the loan collateral. CCC shall not assume any loss of the loan collateral.

(c) CCC may conduct annual collateral inspections to insure compliance with this part. The borrower must consent to such inspection as a term of the loan and failure to supply such access shall put the borrower into default.

(d) Structures must be insured against all perils in all cases and must also be insured against flooding if the structure is located in a flood plain, as determined by CCC. Proof of flood insurance, if required, and proof of all peril structural insurance, must be provided to CCC annually. CCC must be listed as a loss payee on all peril and flood insurance policies.

(e) CCC shall have rights of ingress and egress where the facility is located. Failure of the borrower to secure such access will render a borrower ineligible for the loan and, if a loan has already been made shall constitute a loan default for which the remaining balance of the loan shall become immediately due and payable.

(f) For sugar-related loans, in addition to the requirements of paragraph (d) of this section, sugar processors shall also insure the contents of storage structures used as collateral for a sugar-related facility loan against all perils.

[66 FR 4612, Jan. 18, 2001, as amended at 67 FR 54939, Aug. 26, 2002]

### § 1436.16 Foreclosure, liquidation, assumptions, sale or conveyance, bankruptcy.

(a) The collateral or land securing a loan may be sold by CCC whenever CCC has declared the entire indebtedness immediately due and payable under this part as follows:

(1) If a demand for payment is not received by the due date acceptable to CCC, CCC may call the loan and initiate foreclosure proceedings by issuing a liquidation letter to the borrower.

(2) The debtor may voluntarily agree to allow removal of the collateral to facilitate sale by signing an agreement for sale. If the debtor objects to removal of collateral, the law of the state where the collateral exists will be used to foreclose on the property.

(3) For loans with movable collateral and no real estate lien, CCC may sell the collateral for the best price obtainable. Sales proceeds shall be distributed in the following order:

(i) To CCC to satisfy the debtor's indebtedness including all costs associated with selling the collateral.

(ii) Payment to junior lien holders if approved by USDA's Office of the General Counsel and then to the borrower or other persons as determined appropriate by that office.

(4) For loans with nonmovable collateral, as determined by CCC, and no real estate lien, CCC may establish a claim according to 7 CFR part 1403.

(5) For loans secured with a real estate lien, CCC may obtain an appraisal of the property. Sales proceeds shall be distributed in the following order:

(i) To CCC to satisfy the debtor's indebtedness including all costs associated with selling the collateral and the appraisal.

(ii) To junior lien holders if approved by USDA's Office of the General Counsel; or

## § 1436.17

## 7 CFR Ch. XIV (1-1-09 Edition)

(iii) To the borrower or other persons as determined appropriate by that office.

(b) Assumption by another borrower of a farm storage facility loan is permitted subject to county committee approval and the subsequent borrower's ability to show a satisfactory credit history. An assumption of the loan may be approved when the collateral is sold by CCC to an otherwise eligible borrower, the current borrower will convey the collateral or property securing the loan to another eligible borrower, or the borrower is dead, incompetent, or missing and an eligible borrower wants to assume the loan.

(1) Requests for approval of assumptions shall be made to the county committee by the borrower, the borrower's successors, or representatives of the borrower. If approval is granted, the borrower's successors or representatives shall execute a new farm storage facility note and security agreement for the balance of the term of the loan.

(2) The principal amount of the loan shall include the unpaid amount of the loan, interest computed to the date of assumption, all past due installments, and any other charges that may be required.

(c) The borrower may voluntarily convey the collateral to CCC before repaying the loan. Before a borrower sells or conveys the facilities or other property securing a loan without repaying the loan in full, the borrower shall obtain approval for the sale or conveyance from the FSA county committee with the understanding that sale proceeds shall be paid to satisfy the borrowers indebtedness to CCC.

(d) Remedies provided for in this section shall, unless CCC determines otherwise, be subject to the administrative appeals provided for elsewhere in this part, including those that are found at § 1436.13.

### § 1436.17 Environmental compliance.

(a) Except as otherwise specified in this section, prior to approval of any farm storage facility loan, an environmental evaluation will be completed to determine if the proposed action will have any adverse impacts on the environment and cultural resources.

(b) If it is determined that a proposed action or group of proposed actions will not result in any adverse impact, the action will be considered as being categorically excluded for the purpose of compliance with the National Environmental Policy Act (NEPA), 40 CFR parts 1500-1508.

(c)(1) If adverse environmental impacts (either direct or indirect) are identified, an environmental assessment will be completed in accordance with the Council on Environmental Quality's Regulations for Implementing the Procedural Provisions of NEPA.

(2) The environmental assessment will be used to develop an action that results in no significant environmental impact on the human environment or cultural resources.

(3) No action will be approved that has been determined to have significant impacts on the human environment or cultural resources.

(d)(1) In order to minimize the exposure to environmental liabilities from the presence of contamination on real estate collateral, an evaluation will be made of the economic and environmental risks to the real estate collateral posed by the presence of hazardous substances and petroleum products.

(2) If the evaluation made under paragraph (d)(1) of this section reveals that the collateral is or may be contaminated, then the applicant will be notified and given an option of offering as collateral other real estate that is free from contamination or remediating the contamination on the original site offered as collateral.

### § 1436.18 Appeals.

The appeal, reconsideration, or review of all determinations made under this part, except for provisions for which there are no appeal rights because they are determined rules of general applicability, must be in accordance with parts 11 and 780 of this title.

### § 1436.19 Equal Opportunity and Non-discrimination requirements.

(a) No recipient of a Storage Facility loan shall directly, or through contractual or other arrangement, subject any person or cause any person to be subjected to discrimination on the basis of

## Commodity Credit Corporation, USDA

## § 1437.1

race, religion, color, national origin, gender, or other prohibited basis. Borrowers must comply with all applicable Federal laws and regulations regarding equal opportunity in hiring, procurement, and related matters.

(b) With respect to any aspect of a credit transaction, CCC will not discriminate against any applicant on the basis of race, color, religion, national origin, sex, marital status, or age, provided the applicant can execute a legal contract. Nor will CCC discriminate on the basis of whether all or a part of the applicant's income derives from any public assistance program, or whether the applicant in good faith, exercises any rights under the Consumer Protection Act.

[67 FR 54939, Aug. 26, 2002. Redesignated at 67 FR 65690, Oct. 28, 2002]

### PART 1437—NONINSURED CROP DISASTER ASSISTANCE PROGRAM

#### Subpart A—General Provisions

Sec.

- 1437.1 Applicability.
- 1437.2 Administration.
- 1437.3 Definitions.
- 1437.4 Eligibility.
- 1437.5 Coverage period.
- 1437.6 Application for coverage and service fee.
- 1437.7 Records.
- 1437.8 Unit division.
- 1437.9 Causes of loss.
- 1437.10 Notice of loss, appraisal requirements, and application for payment.
- 1437.11 Average market price and payment factors.
- 1437.12 Crop definition.
- 1437.13 Multiple benefits.
- 1437.14 Payment and income limitations.
- 1437.15 Miscellaneous provisions.

#### Subpart B—Determining Yield Coverage Using Actual Production History

- 1437.101 Actual production history.
- 1437.102 Yield determinations.
- 1437.103 Late-planted acreage.
- 1437.104 Assigned production.
- 1437.105 Determining payments for low yield.
- 1437.106 Honey.
- 1437.107 Maple sap.
- 1437.108–1437.200 [Reserved]

#### Subpart C—Determining Coverage for Prevented Planted Acreage

- 1437.201 Prevented planting acreage.
- 1437.202 Determining payments for prevented planting.
- 1437.203–1437.300 [Reserved]

#### Subpart D—Determining Coverage Using Value

- 1437.301 Value loss.
- 1437.302 Determining payments.
- 1437.303 Aquaculture, including ornamental fish.
- 1437.304 Floriculture.
- 1437.305 Ornamental nursery.
- 1437.306 Christmas tree crops.
- 1437.307 Mushrooms.
- 1437.308 Ginseng.
- 1437.309 Turfgrass sod.
- 1437.310 Sea grass and sea oats.
- 1437.311–1437.400 [Reserved]

#### Subpart E—Determining Coverage of Forage Intended for Animal Consumption

- 1437.401 Forage.
- 1437.402 Carrying capacity.
- 1437.403 Determining payments.
- 1437.404 Information collection requirements under the Paperwork Reduction Act; OMB control number.

#### Subpart F—Determining Coverage in the Tropical Region

- 1437.501 Applicability; definition of "tropical region" and additional definitions
- 1437.502 Coverage periods and fees for covered tropical crops.
- 1437.503 Covered losses and recordkeeping requirements for covered tropical crops.
- 1437.504 Notice of loss for covered tropical crops.
- 1437.505 Application for payment for the tropical region.

AUTHORITY: 7 U.S.C. 7333; 15 U.S.C. 714 *et seq.*; and 48 U.S.C. 1469.

SOURCE: 67 FR 12448, Mar. 19, 2002, unless otherwise noted.

#### Subpart A—General Provisions

##### § 1437.1 Applicability.

(a) The Noninsured Crop Disaster Assistance Program (NAP) is intended to provide eligible producers of eligible crops coverage equivalent to the catastrophic risk protection level of crop insurance. NAP is designed to help reduce production risks faced by producers of commercial crops or other